IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.1258 of 2006
In
Writ Petition No.6026 of 2004

All India Knoll Pharmaceuticals
Employees Union — Applicant
Vs.
Mr.Miles While, Chairman, CEO,
Abbott Laboratories & ors. — Respondents

Mr.Arshed Shaikh i/b. M/s.Sanjay Udeshi & Co. for applicant.

Mr.K.M.Naik for Resp.Nos.1,2,3,4, 7 and 8.

Mr.D.G.Banage for Resp.No.6.

CORAM: B.H.MARLAPALLE,J.

August 23, 2006.

P.C.

1. Heard the learned counsel for the respective parties. The appilcant-Union has filed Writ Petition No.6026 of 2004 challenging the judgment and order dated 28/4/2004 rendered by the learned Member of the Industrial Court at Mumbai and by which the Complaint (ULP) No.341 of 2002 filed by the Union came to be dismissed. While admitting the petition this Court by its order dated 25/8/2004 inter alia stated as under:

"The operative portion of the order dated 28th April 2004 passed by the Member, Industrial

Court, Mumbai in Complaint (ULP) NO.341 of 2002 is substituted by the following order:-

> The mere fact that the employees have commenced working in the factory situated at Jejuri will not mean that they have consented to be the employees of Respondent No.6 herein."

2. Since the dispute between the parties in Writ Petition No.6026 of 2004 is pending as at present and no interim order was passed by this Court, this application has been taken out by the Union praying for directions to release the payment of bonus as well as other arrears to be payable in terms of the monetary benefits and as per the settlement dated 23/1/2001 signed between the Union and its original employer i.e. Respondent Nos.7/8. The Respondent no.6 has taken over the factory of Respondent Nos.7/8 at Jejuri in Pune district and for the said transfer the provisions of Section 25FF of the Industrial Disputes Act, 1947 were invoked in respect of the employees in the said factory. However instead of invoking the first choice, the transferee and transferor preferred the second choice in the said

section under the proviso and the employees working in the factory came to be transferred as the employees of respondent no.6. This transfer was challenged by filing Complaint (ULP) NO.341 of 2002 and by the judgment and order impugned in the writ petition the complaint came to be dismissed and the said order has not been stayed by this Court and, therefore, as on today the transfer of the factory at Jejuri along with the employees therein as made by Respondent nos.7/8 to respondent no.6 remains in operation.

3. The Union claims that the respondent no.6, though bound to pay the salaries and other financial benefits as per the settlement dated 23/1/2001, some of the benefits flowing from the said settlement have been denied by the respondent no.6 and in turn the Union claims that the said benefits will have to be extended either by the present employer or the original employer. The Union has pointed out that the incremental benefits under Clause 5 and the payment of bonus under Clause 26 of the said settlement has not been implemented in its entirety. A representation dated 23rd September 2004 which has been replied by the respondent no.6 has been annexed

to this application and the Union claims that the benefits which the employees were entitled to and specified therein have not been extended in spite of the fact that the Managing Director of the respondent no.6 has furnished a written undertaking before this Court on 1st June 2002 in Writ Petition No.1474 of 2002.

3A. The said undertaking has been furnished by Mr.Ashok S. Bora in his capacity as the Director of the Respondent No.6 - Company and paras 2 and 3 of the said undertaking read as under:

> "2. I hereby undertake on behalf of the 7th respondent - company that, pending hearing and final disposal of Complaint (ULP) No.341 of 2002 the workmen of Knoll Pharmaceuticals Ltd., Jejuri Plant who accept transfer to our establishment under Section 25-FF of the Industrial Disputes Act, 1947, shall not, except on the grounds of misconduct, be terminated in any manner including by way of retrenchment and/or closure. They shall also not be kept out of employment by way of lay off during this period.

3. I further undertake that upon transfer of the said undertaking the 7th Respondent shall continue to give to the said workmen the same salary and benefits as are set out in Settlement dated 23.1.2001 signed by and between Respondent No.1 and the Petitioner. All future wages shall be as per negotiations with the said union and failing that as per Award of the competent Tribunal."

. The Respondent No.7 in Writ Petition No.1474 of 2002 is the Respondent No.6 in the instant petition and the Respondent No.1 in the said earlier petition is Respondent nos.7/8 in this petition.

4. The learned counsel for the transferor company has taken a plea that once the undertaking was furnished on 1/6/2002 on behalf of the respondent no.6 - company i.e. the transferee, the transferor had no liability arising from the said settlement dated 23/1/2001 in respect of the employees working with the Jejuri factory which came to be transferred to the respondent no.6. Mr.Bhanage, the learned counsel appearing for the respondent no.6 in addition

to the reply filed by the said Company also submitted in his oral arguments that by and large the terms of the said settlement have been followed but there are certain clauses like dearness allowance, annual increments, housing loan, vehicle loan and payment of bonus which could not be implemented in their totality and as per Mr. Bhanage the management of Respondent No.6 cannot be faulted with the same and consequently this application deserves to be rejected. In support of his submissions, it was contended that the settlement has expired on 30th September 2003, it was terminated by the applicant Union on 4/11/2003 and the Union has not submitted any charter of demands for revision of wages and other service conditions and, therefore, as per the respondent no.6 it is not obligatory on its part to continue to extend the benefits of the said settlement in its entirety. It was further pointed out that after 22/4/2003 no applications for vehicle loans were received and the applications received for housing loan till 31/3/2004 have been cleared. As far as payment of bonus is concerned it was submitted that bonus has been disbursed for the concerned financial years but at the rate of 8.33 per cent which is justified in view of the performance of the

respondent no. 6 - company during the relevant years and that too after 30/9/2003. The clause regarding payment of bonus in the settlement dated 23/1/2001 states that every employee in the Jejuri factory shall be paid bonus at the rates accepted by the respondent nos.7/8 for its other establishments. Mr.Bhanage, therefore, submitted that when bonus is a deferred wage and is a statutory liability under the Payment of Bonus Act and it is related to the performance of the respondent no.6 company, there is no justification and legal obligation to continue to pay bonus at the rates determined by the transferor company for its employees in the other establishments and, therefore, after the term of the settlement has expired, the respondent no.6 company is not bound by the said settlement in respect of the payment of bonus.

4A. These submissions sound impressive but if regards be had to the undertaking by and on behalf of the respondent no.6 before this Court on 1st June 2002, there is no alternative for the transferee company and it cannot deviate from any terms of the settlement dated 23/1/2001 inspite of the fact that it has expired. It is well settled in the industrial

relations that the terms of the settlement on its expiry continue to operate unless the new settlement is signed between the parties or either of the parties followed the legal process to discontinue the said benefits. Admittedly the respondent no.6 has not given any notice of change within the meaning of Section 9A of the Industrial Disputes Act, 1947 to the applicant - Union till this date, it has not submitted any charter of demand and handed over to the applicant - Union conveying its intention that on account of its present financial position it proposes to reduce the salary structure or other financial benefits payable under the settlement dated 23/1/2001. On the other hand the undertaking furnished before this Court is clear and unambiguous. The Director of the respondent no.6 has undertaken before this Court that upon transfer of the factory at Jejuri the respondent no.6 shall continue to give the workmen in the said factory the same salary and benefits as are set out in the settlement dated 23/1/2001 signed by and between the respondent nos.7/8 and the petitioner. The said undertaking further states that all future wages shall be as per the negotiations with the said Union and failing that as per the Award of the competent Tribunal. This

last clarification had given a scope to the transferee company to resort to the alternative modes in case it was convinced that its financial conditions did not permit it to follow the terms of settlement dated 23/1/2001. Under these obtaining circumstances, the plea of the respondent no.6 to oppose this application cannot be entertained.

5. Hence this application succeeds partly and the same is hereby allowed in terms of prayer clauses (b) and (c) against Respondent No.6-Company and it is further made clear that the respondent no.6 shall be bound by the undertaking furnished before this Court during the pendency of Writ Petition No.6026 of 2004 unless it resorts to any other alternative remedy as suggested in the said undertaking.

(B.H.MARLAPALLE,J.)